

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3509 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DAMODAR OIL MILL

Versus

DISTRICT SUPPLY OFFICER JUNAGADH

Appearance:

MR PM RAVAL for Petitioner

Mr. V.B.Gharania, ASSTT. GOVERNMENT PLEADER for
Respondent Nos. 1, 2.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 03/03/2000

ORAL JUDGEMENT

This petition has been filed for quashing
the impugned judgment and order dated 18.6.87 passed by
the Deputy Secretary (Appeals), Food and Civil Supplies
Department, Government of Gujarat, Gandhinagar.

2. The petitioner is running a partnership firm in the name of Damodar Oil Mill at Dolatpura, Junagar. The Mamlatdar inspected the petitioner's premises on 27th July, 1986 at about 10.00 p.m. The learned Assistant Government Pleader states that the time of inspection is 8.30 p.m. The Mamlatdar found that there was a total stock of 13037 kgs. of groundnut oil on the opening day, whereas on actual inspection, it was found that there were 3000 kgs. of groundnut and 16035 kgs. of groundnut oil. Thus, there was a deficit of 10036 kg s. in groundnut and 4445 kgs of groundnut oil was found in excess. On the basis of the seizure, the District Supply Officer, Jamnagar issued a show cause notice for breach of clause-23 of the Gujarat Essential Commodities (Licensing, Control and Stock Declaration) Order, 1981 by the petitioner and the petitioner was called upon to submit its explanation. The petitioner filed its reply to the District Supply Officer. The District Supply Officer, after considering the facts and circumstances of the reply of the petitioner, the District Supply Officer by his order dated 22nd September, 1986 passed the order confiscating commodity i.e. 3000 kgs. of groundnut and 574 kgs. of groundnut oil. The petitioner being aggrieved by the impugned order of the Collector, filed an appeal before Deputy Secretary (Appeals), Food and Civil Supplies Department, State of Gujarat, Gandhinagar, who, after giving an opportunity of hearing came to the conclusion that the confiscation of 574 kgs. of groundnut oil was not justified, hence that commodity was released, but the order of District Supply Officer regarding confiscation of 3000 kgs. of groundnut was maintained and accordingly, the appeal was partly allowed in respect of 573 kgs. of groundnut oil and the appeal was dismissed in respect of 3000 kgs. of groundnut. Therefore, the petitioner has filed this petition before this Court.

3. The learned counsel for the petitioner submitted that the oil mill was in operation at the relevant time of the inspection. According to the petitioner, it was 10.30 p.m., while according to the learned Assistant Government Pleader, it was 8.30 p.m. when the raid was carried out. When the machines of the oil mill were in operation, it was natural that raw groundnut was being supplied to the machinists and after grinding them, oil was being extracted. Hence, it is but natural that the exact quantity of the raw groundnut at the relevant time will be found less than the quantity shown in the stock register at the time of the opening day and the exact quantity of oil will be increased at the relevant time when inspection was made. The learned

counsel for the petitioner pointed out from the provisions of clause-23 of the aforesaid Order that every dealer or producer is required to maintain a register of daily stock of essential articles showing correctly the opening stock for the day, the stock received during the day and the place from where and the source from which received and stock delivered or otherwise removed and closing stock of such essential article in which he carries on the business as dealer or producer. The dealer or producer is also required to complete as far as possible his accounts for the day immediately after closing his business for the day and the same will be completed before the opening of the premises the next day. In view of the provisions of clause 23 of the said Order, the petitioner is required to give complete details regarding the stock at the time when the day starts. According to the learned Assistant Government Pleader, the raid was carried out at 8.30 p.m. According to the learned counsel for the petitioner, at that time, the machiners of the mill were in operation and oil was being extracted from the row groundnuts. As such, it was but natural that the total stock shown in the morning when the day started cannot remain static throughout the day. When the machines were in operation extracting oil from row groundnuts, row groundnut will be found in less quantity and the oil will be found in more quantity at the time when inspection was made. As such, the order passed by the Deputy Secretary confiscating the articles is illegal and not sustainable in the eye of law.

4. On the other hand, the learned Assistant Government Pleader contended that the petitioner could not be able to show any bill and gate pass regarding articles seized i.e. 3000 kgs. of groundnut. He further contended that the petitioner could not show any gate pass or invoice regarding 3000 kgs. of groundnut and it appears that this ground has been taken for the first time before this Court and that the petitioner has not taken the ground that machines were in operation before the lower authorities. In this respect, the learned counsel for the petitioner pointed out that it is true that there is no such gate pass, bill or invoice regarding 3000 kgs. of groundnut but the petitioner produced kutchi chithi (kutchi receipt) regarding the stock of that groundnut. It may be that it might not have been entered in the gate pass at the time when the inspection was made. Thus, only on the ground that the petitioner could not produce the bill, gate pass or invoice regarding recovery of 3000 kgs. of groundnut is not sufficient to hold that this groundnut was illegally obtained by the petitioner. The learned counsel for the

petitioner further relied on the decisions in the case of K.V.Allimuthu and Company vs. State of Gujarat and others reported in 1986 GLH (UJ), 55 wherein the ratio of the case of M/s. Govind Karsan and Company vs. State 24(1) G.L.R. 145 reported in 24(1) GLR, 145 has been accepted and it is held that the authorities are required to take into consideration the following factors before ordering to confiscate the commodity in question.

1. Is it a technical breach meaning thereby, is it only a formal contravention ?
2. The contravention complained of has any bearing on the stream of supply of the commodity in the market or is it merely an incidental breach ?
3. Is the dealer actuated by motives of hoarding and thereby to reap illegitimate profits ?
4. Is the dealer found to have been including in such activity of hoarding and/or blackmarketing in past ?
5. Whether the contravention complained of is likely to create an artificial situation of shortage either in the town itself or in the entire market of the commodity in question ?
6. Is the dealer a petty businessman managing to make both ends meet with difficulty or is a big trader whose insatiable hunger for profit is the motivating force behind the contravention in question ?

On the basis of the rule laid down by this Court as aforesaid, the learned counsel for the petitioner contended that the authorities have not considered these aspects in consifacting the article. As such, at the most, even if it is assumed, then also this is a technical contravention which does not call for taking action of confiscation.

5. After going through the entire record and considering the material on record, I hold that the machines of the mills were in operation in extracting oil from row groundnut at the relevant time of the inspection. Even if it is assumed that there was some shortfall or excess of the stock, but it was 8.30 p.m. or 10.00 p.m. Under the provisions of the Order, the petitioner is required to show the complete stock in the Register at the time of closing of the business on the day. Thus, from the material on record, the order confiscating 3000 kgs. of groundnut does not appear to be justified one. Therefore, this petition deserves to be allowed and the impugned orders are liable to be

quashed and set aside. Accordingly, this petition is allowed. The order dated 22nd September, 1986 passed by the District Supply Officer and the order dated 18.6.87 in Appeal No. 276 of 1986 passed by the Deputy Secretary (Appeals) Food and Civil Supply Department, Government of Gujarat, Gandhinagar are hereby quashed and set aside. In case the amount of confiscated commodity has been deposited with the Government, such amount will be refunded to the petitioner within a period of three months from today. Rule is made absolute accordingly with no order as to costs.

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